

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KAMLESH BANGA,

Plaintiff,

vs.

FIRST USA, NA and CHASE BANK USA,

Defendants.

Case No: C 10-0975 SBA

Related to:
C 08-4147 SBA

**ORDER DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

Docket 65

On December 8, 2010, Magistrate Judge Laurel Beeler issued a Report and Recommendation on Defendant's motion under Federal Rule of Civil Procedure 41(d) for an award of costs in a related action, Banga v. Experian Information Systems and Chase Bank, No. C 08-4147 SBA ("Banga I"). Dkt. 59. Included among the costs sought by Defendant was a \$670.05 charge by First Legal for multiple attempts to serve a deposition subpoena on Lal Mardan. See Defs.' Mot. For Costs, Ex. G, Dkt. 31-3 at 61. Magistrate Judge Beeler recommended awarding costs in the amount of \$1,247.84, which consisted of 1067.39 in "Federal Express/Filing" costs (which, in turn, included the \$670.05 charge), and \$180.45 in copying costs. Dkt. 59 at 2. She further recommended staying the action until Plaintiff remitted those costs to Defendant. Id.

Plaintiff filed objections to the Report and Recommendation in which she argued that only \$180.45 in copying costs could be awarded. Dkt. 60. On March 16, 2011, the Court issued its Order overruling Plaintiff's objections and accepting the recommendations of Magistrate Judge Beeler. Dkt. 64. The Court specifically warned Plaintiff that her

1 action would be dismissed under Federal Rule of Civil Procedure 41(b) if she did not tender
2 payment within thirty days. Id.

3 On March 30, 2011, Plaintiff filed the instant Motion for Reconsideration of Order
4 Accepting Report and Recommendation of Magistrate Judge. The sole basis for her motion
5 is that the Court erred in including the \$670.05 charge for the subpoena in its cost award.
6 Plaintiff claims that “she was not aware . . . that Defendant had represented to the Court
7 that it had paid to the process server in serving a subpoena as it was not mentioned in said
8 Recommendation issued on December 10, 2010.” Pl.’s Mot. for Reconsideration at 1, Dkt.
9 65. The actual cost of serving the deposition subpoena--she claims--was only \$59.00. Id.
10 at 2.

11 To seek reconsideration of a court order, the movant must first file a motion for
12 leave to file a motion for reconsideration in accordance with Civil Local Rule 7-9. Local
13 Rule 7-9 states:

14 The moving party must specifically show:

15 (1) That at the time of the motion for leave, a material
16 difference in fact or law exists from that which was presented to
17 the Court before entry of the interlocutory order for which
18 reconsideration is sought. The party also must show that in the
exercise of reasonable diligence the party applying for
reconsideration did not know such fact or law at the time of the
interlocutory order; or

19 (2) The emergence of new material facts or a change of law
20 occurring after the time of such order; or

21 (3) A manifest failure by the Court to consider material facts
22 or dispositive legal arguments which were presented to the
Court before such interlocutory order.

23 In violation of the Local Rules, Plaintiff failed to first seek leave of court before filing her
24 motion for reconsideration. On that basis alone, the Court may properly deny Plaintiff’s
25 motion. Tri-Valley CARES v. U.S. Dept. of Energy, 671 F.3d 1113, 1131 (9th Cir. 2012)
26 (“Denial of a motion as the result of a failure to comply with local rules is well within a
27 district court’s discretion.”).
28

1 Plaintiff's failure to comply with Local Rule 7-9 notwithstanding, the Court finds no
2 merit to her motion for reconsideration. As a threshold matter, Plaintiff has failed to
3 demonstrate excusable neglect for failing to raise the issue sooner. Plaintiff asserts that she
4 is not a registered user on the Court's e-filing system, and therefore, she did not receive a
5 copy of Defendant's response to her objections wherein it mentioned the \$670.05 as the
6 cost incurred for unsuccessful attempts to serve the subpoena. See Def.'s Response to Pl.'s
7 Objections at 3, Dkt. 63. However, Plaintiff ignores that the invoice containing the \$670.05
8 charge was included as an exhibit in support of Defendant's Rule 41(d) motion for costs.
9 See Defs.' Mot. for Costs, Ex. G, Dkt. 31-3 at 61. Plaintiff had the opportunity to challenge
10 said amount at the hearing held by Magistrate Judge Beeler and in her objections to
11 Magistrate Judge Beeler's Report and Recommendation. Her failure to do so does not
12 justify her belated attempt to raise the issue in a motion for reconsideration.

13 Plaintiff's motion for reconsideration also fails on the merits. Plaintiff's allegation
14 that Defendant never paid \$670.05 and that the actual cost of serving the subpoena was
15 only \$59.00 is entirely unsupported. In fact, the record shows that the cost of serving the
16 subpoena included multiple attempts to serve the deponent, and that Defendant, in fact, paid
17 said amount to the process server, First Legal. See Krog Decl. ¶¶ 3-4, Dkt. 68-1; Malouf
18 Decl. ¶ 2, Dkt. 8-2. Thus, despite Plaintiff's unsubstantiated claims to the contrary, it is
19 clear that Defendant did not misrepresent the \$670.05 fee to the Court. In her reply,
20 Plaintiff argues, for the first time, that Defendant could have used a more reasonably priced
21 process server. Pl.'s Reply at 2, Dkt. 69. However, a "district court need not consider
22 arguments raised for the first time in a reply brief." Zamani v. Carnes, 491 F.3d 990, 997 (9th
23 Cir. 2007) (citation omitted). Moreover, Plaintiff's claim that First Legal's charges are
24 excessive is based on the personal opinion of the Plaintiff, who clearly is not competent to offer
25 such an opinion. Accordingly,

26 IT IS HEREBY ORDERED THAT:


27 1. Plaintiff's Motion for Reconsideration is DENIED.
28

2. Within twenty-one (21) days from the date this Order is filed, Plaintiff shall pay Defendant \$1,247.84 in costs and shall file a certificate with this Court confirming payment; this action is stayed in the interim. Plaintiff is warned that failure to pay within the deadline indicated may result in dismissal of this action, without further notice, under Federal Rule of Civil Procedure 41(b) for lack of prosecution.

3. This Order terminates Docket 65.

IT IS SO ORDERED.

Dated: March 30, 2012


SAUNDRA BROWN ARMSTRONG
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BANGA et al,

Plaintiff,

1 v.

2 FIRST USA, N.A. ET AL et al,

3 Defendant.

4 _____/
5 Case Number: CV10-00975 SBA

6 **CERTIFICATE OF SERVICE**
7

8 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
9 Court, Northern District of California.

10 That on April 13, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
11 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
12 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
located in the Clerk's office.

13 Kamlesh Banga
14 P.O. Box 6025
15 Vallejo, CA 94591

16 Dated: April 13, 2012

17 Richard W. Wieking, Clerk

18 By: Lisa Clark, Deputy Clerk
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